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REMOVALS TO FEDERAL COURTS.

If legislators and others wish to find an effective partial remedy against foreign corporations getting into federal courts, by removing causes, they might profitably study Straub v. Lyman Land and Investment Co., 141 N. W. 979, decided by Supreme Court of South Dakota and discussed in 77 Cent. L. J. 419

PRESIDENTIAL PRIMARIES.

The contention that an act of Congress for presidential primaries would be unconstitutional, because to states is given the power to direct the manner of choosing electors, seems unanswerable. Certainly, if a state chose them by vote of its legislature, it would be curious to assert that Congress could supervise the election of members of the legislature; and, yet, if it cannot control the subject the same in one state as in another, it is fair to claim it cannot control it in any state. The method of choosing electors is, possibly, the most archaic of any thing in the constitution.

BURDEN ON INTERSTATE COMMERCE.

The Supreme Court in Baltic Min. Co. v. Massachusetts, 34 Sup. Ct. 15, distinguishes the principle applied in W. U. Tel. Co. v. Kansas, 216 U. S. 1, and Pullman Co. v. Kansas, 216 U. S. 56, where it was held that a tax could not be laid upon entire capital employed in all their business, by saying it necessarily burdened interstate commerce, while with the Mining Company its business is not of itself commerce, though its products are sold and shipped in interstate commerce. Therefore, it was held a tax on the authorized capital of the Mining Company does not bring a necessary burden on commerce, and was rightly laid, as a condition of the company doing busness in another state. The distinction is one of severe refinement.

ARE THE PUEBLO INDIANS OF NEW MEXICO SUBJECT TO FEDERAL CONTROL?

The Pueblo Indians of New Mexico were, by the plan of Iguala, adopted by the revolutionary government of Mexico in 1821, made citizens thereof and by the treaty of Guadalupe Hidalgo of February, 1848, whereby New Mexico was ceded to this government, all citizens therein became entitled "to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution."

This plan of Iguala, as establishing the status of a Pueblo Indian, was recognized by the U. S. Supreme Court in 1854 in U. S. v. Ritchie, 58 U. S. (17 How.) 525, a case arising in California included in the cession above referred to. It was said: "These solemn declarations (in the plan of Iguala) . . . had the effect, necessarily to invest the Indians with the privileges of citizenship as effectually as had the declaration of independence of the United States of 1776 to invest all those persons with these privileges residing in the country at the time and who adhered to the interests of the colonies," and the opinion refers to the fact that all of the pueblos or towns of Pueblo Indians were reported upon by direction of Congress for confirmation of title under Mexican grant. Later by act of Congress in 1858 they were confirmed to the inhabitants respectively of such pueblos.

Decision in the Territory of New Mexico from an early date as to application of Intercourse Act of 1834 held that the Pueblos of New Mexico were not Indians, that is to say, tribal Indians, in the sense of that act, and this view was upheld in U. S. v. Joseph, 94 U. S. 614, decided in 1876.

The opinion in this case says of them: "The criminal records of the courts of the territory scarcely contain the name of a Pueblo Indian. In short they are a peaceable, industrious, intelligent, honest and virtuous people. They are Indians only in feature, complexion and a few of their habits." Then, after speaking of "the nomadic Apaches, Comanches, Navajoes and

other tribes whose incapacity for self-government" made them need the guardian care of our government, the opinion further says: "The Pueblo Indians, if indeed they can be called Indians, had nothing in common with this class. . . . If they differ from the other inhabitants of New Mexico in holding land in common and in a certain patriarchal form of domestic life, they only resemble in this regard the Shakers and other communistic societies in this country."

The court noticed the contention that they were not citizens, and said: "We have no hesitation in saying their *status* is not to be determined solely by the circumstance that some officer of the government has appointed for them an agent."

Pueblo Indians having this status, the question was whether the introducing of liquor into the Indian country, made an offense by Act of Congress of January 30, 1897, as supplemented by enabling act for admission of New Mexico as a state, applied to a pueblo or Indian town in New Mexico. It was held by the District Court of New Mexico that the original act did not embrace such a pueblo, and that it being territory under the exclusive police power of a state, Congress could not impose upon it as a condition of admission as a state the surrender thereof. U. S. v. Sandoval, 198 Fed. 539. This holding was reversed by the Supreme Court. Samė v. Same, 34 Sup. Ct. 1.

The Supreme Court considered it unnecessary to say whether the original act would have embraced pueblo lands, but held, following Coyle v. Oklahoma, 221 U. S. 559, that this was legislation not deriving its force from agreement with a proposed state but "solely because the power of Congress extended to the subject," if it does so extend. This eliminates reasoning by the lower court as to a condition imposed on a proposed state putting it on an inequality with sister states, and brings the question up as to whether the lands of Pueblo Indians are Indian country or can be called such by Congress, when in the confines of a state.

The opinion is by Mr. Justice Van Devanter and it describes these Indians in a vastly different way than did Justice Miller in U. S. v. Joseph, *supra*, who looked for his information to their history as found in New Mexico decision. Justice Van Devanter speaks of their being "Indians in race, customs and domestic government . . . largely influenced by superstition and fetichism and chiefly governed according to the crude customs inherited from their ancestors . . . essentially a simple, uninformed and inferior people. Upon the termination of the Spanish sovereignty they were given enlarged political and civil rights by Mexico, but it remains an open question whether they have become citizens of the United States." The court then quotes from Indian agents' reports, their exclusion from voting by laws of the Territory of New Mexico and finally refuses to decide the question whether a Pueblo Indian is a citizen or not saying: "Whether they are citizens is an open question, and we need not determine it now, because citizenship is not in itself an obstacle to the exercise by Congress of its power to enact laws for the benefit and protection of tribal Indians as a dependent people."

In the first of the cases cited (Cherokee Nation v. Hitchcock) it was thought that the citizenship of any particular applicant for a share in tribal lands had nothing to do with coingressional control thereover. That seems a different question from control over a community where all of the community were citizens of the United States before and at the time they became a part of our people.

In another case (U. S. v. Rickert, 188 U. S. 432, 445) it was claimed the state of South Dakota had given to the Indians the right of suffrage and other rights ordinarily belonging to citizens, but it was answered, in effect, that what the state did in this could not divest Congress of its right to say "when these Indians shall cease to be de-

pendent and assume the responsibilities attaching to citizenship." To those pueblos the United States guaranteed citizenship (or not) and this case seems authority against what it is cited to support, i. e. Justice Van Devanter's view.

U. S. v. Celestine, 215 U. S. 278, decides only that conferring citizenship on an individual Indian leaves him still an Indian as to an offense against another Indian within the limits of a reservation. But a town owned by a community of Indians, who are citizens may scarcely be considered an Indian reservation. These pueblo towns were confirmed to citizens as such and not as Indians, if Pueblo Indians became citizens.

Hallowell v. U. S., 221 U. S. 317, concerned the power to make rules and regulations about tribal lands, and declared that conferring citizenship on members of the tribe did not divest that jurisdiction.

All of these cases seem vastly different from the case of lands belonging to citizens, as such and the title to which the United States never claimed the right to interfere with in any way; and which never were regarded as tribal lands. If never tribal lands they were never Indian country, except by a strange perversion of terms.

NOTES OF IMPORTANT DECISIONS.

INSURANCE—IMPAIRMENT OF HEALTH BETWEEN APPLICATION FOR INSURANCE AND DELIVERY OF POLICY.—The Ninth Circuit Court of Appeals held in the case of New York Life Insurance Co. v. Moats, 207 Fed. 481, that, where there was no express condition in a policy which provided for its going into effect as of the date of application, if issued, that insured should be in sound health at the date of its delivery, then any concealment of impaired health arising between application and delivery did not violate the latter, this being a risk by the company.

The theory of the company was that representations up to the time of delivery were of a continuing nature and the court distinguishes all of the cases cited either by there being a clause to this effect or where there was a lapse and reinstatement, and it would seem that industry had searched in vain for a case on all fours with the case at bar.

To our mind, however, there is no need for any express provision that representations shall be continuing in view of the universal practice, of which courts take judicial notice, of how insurance is effected. In other words, an application for a policy is a request for insurance upon conditions set forth in the request. It is understood by the parties that acceptance, if granted, is based upon those, and upon no other, conditions. If, therefore, they have changed, the offer to pay for insurance is an offer that should not be deemed to continue.

Stress is laid upon the fact, that the premium relates back to a day past when, if the premium is for a year, a year's insurance really is not earned. Nevertheless, the insured agrees to call it a year to obtain a status for future years, knowing that if he dies within, say eleven months, the contract is greatly to his advantage. So also, if he dies at any time short of the expectancy period his contract is to run.

If, therefore, an application is an offer to insure, good faith continues only so long as conditions back of the offer continue. To carry the principle announced by the court to its last analysis, if an offerer were in extremis the policy would be valid, and we do not know but some court might rule it would cover a case of intermediate death, all of which seems absurd.

MALICIOUS PROSECUTION—PERJURY IN JUDICIAL PROCEEDING AS BEING FREE FROM CIVIL LIABILITY.—Kentucky Court of Appeals, in McCarty v. Bickel, 159 S. W. 783, held that under the principle that testimony of a witness given in the course of a judicial proceeding is aboslutely privileged, such testimony would not support a civil action against the witness as being the proximate cause of a malicious prosecution, in that it was perjury.

In making this ruling the court distinguished the case of Huggins v. Toler, 1 Bush, (Ky.) 192, where an action for malicious prosecution was held to lie where plaintiff had been apprehended because of false and malicious statements by defendant to a military officer, the court saying: "There is no analogy where a man by false and malicious statement to the arresting officer caused a party to be arrested and confined in prison and that of a case where

one is caused to testify in court under oath against a party already arrested and on trial."

The theory of this is that one is "caused to testify," but if he deliberately and maliciously causes himself to be called as a witness, so that by perjury he may cause a further prosecution of one or injure him in his good name, should public policy shelter his malicious perjury? Is not his testimony under such circumstances just like his affidavit to obtain the issuance of a warrant, both being statements under oath in the course of a judicial proceeding?

Furthermore, is he protected except as his malicious perjury is material? A pertinent case on this subject is Nelson v. Davis, 70 S. E. 599, it holding that a defendant on trial for crime and under Georgia law given the privilege of making a statement instead of being sworn as a witness, and it was said that what he stated was absolute perjury, but the privilege does not cover matters which had nothing to do with his defense.

NOMINATING CONVENTIONS, THEIR VALIDITY AND ORGANIZATION.

In this era of modern advancement and enlightenment in all things, including things political; in this age of progress and "progressive ideas"; of struggle between the sordid "interests" and the common people, between the corrupt political bosses and the intelligent voters for the recovery, control and management of the affairs of political parties, and even of the government itself,—political conventions become an important factor, and it is of prime importance to know and understand just what assemblage of persons constitutes a "political convention" within the meaning of modern statutes and usages, and to have clearly defined their powers and privileges.

There has been a most wonderful advance in things political,—that is, the modus operandi of conducting the affairs of political parties, the methods of choosing delegates to nominating conventions, the conduct of such conventions, and the like. The tendency of all unhampered legislation is, and for some time past has been, to restrict the power and pernicious activities of corrupt political bosses. The lines of party allegiance are being broken down, the voters are becoming more thoughtful and independent; and when the electorate is, by dishonest trickery and subterfuge of the bosses and the scrupulous "interests" cheated of their choice, as in the late Chicago convention, the ticket put up is liable to go down to ignominous defeat.

Political parties and party management we have had ever since the organization of our government; and such parties are commonly regarded as beneficial to the country. In theory this is doubtless true; but in this, as in many other things, the theory does not work well in practice. Forceful or designing men obtain control of the party machinery and manipulate the party, the voters, and the government to promote their own sordid interests. It has ever been thus. Thomas Jefferson, as the head and controller of the party, dictated the nomination of James Madison,—who made a good president. Theodore Roosevelt, as head of the party, dictated and forced the nomination of William Taft,—whom the same party overwhelmingly repudiated on his second nomination. Both these men were leaders of their respective parties, but neither was a "boss," as that word is commonly understood, with all the ignominy properly attaching to it.

In an effort to eliminate the malignant activities and pernicious influence of the "political boss," the "direct primary" has been instituted in many states. Under some of these statutes the candidate is selected by a direct vote of the electorate; in others, delegates to a nominating convention are selected by the electorate by a primary election, and the delegates thus chosen, in convention assembled, select the candidate or candidates to be voted for by the party at the ensuing election,—thus retaining the convention as an important element in the management of parties, and, indirectly, in the political affairs of the country.

It is not the purpose of this article to deal with primary laws in any sense, further than to say that where the election laws provide for a primary election to select delegates to a political nominating convention, those laws must be strictly complied with in order to render the convention "regular," and its nomination of candidates valid and entitle their names to go on the official ballot of the ensuing election.

Neither is it the purpose in this article to discuss the questions relating to the powers and the management of nominating conventions when once assembled and duly and regularly organized according to law. The only questions attempted to be discussed are: What constitutes a valid nominating convention; and how it is to be organized.

A "nominating convention" may be properly defined as an organized assemblage of delegates formally and properly chosen, representing a political party or organization,[1] or principle,[2] assembled for some specific purpose.[3] By statutes of the various states a convention is defined as an organized assemblage of delegates (or voters) representing a political party[4] which, at the last general election next preceding the assembling of the convention, cast a specified per cent of the total vote polled,[5] chosen at a caucus, or otherwise, in accordance with the "political usages" of the party.[6]

In the sense in which the word is being here discussed, and as generally employed in common usage in statutes, political history, and in civil government, the word "convention" means and implies a representative gathering or assemblage of an organized political party.[7] A political party is an organization of electors entertaining the same political opinions on economic questions and theories of government, and attempting, through an organization, to elect officers of their own party faith, and make their political doctrines and theories the policy of the government.[8] The rights and powers of political parties can never be other or greater than the rights of the electors under the law.[9] Political parties do not exist by operation of law, but result from voluntary association of electors, only; and when organized, in the absence of restrictive legislation, they possess plenary powers as to the management of their own affairs.[10] The term "political parties," in election laws, embraces those parties, only, which have participated in a struggle at the polls for political ascendancy.[11]

(1) See Cal. Pol. Code, § 1186, as amended 1907, Cal. Stats. and Amdts. 1907, p. 656, Kerr's Stats. Amdts. 1906-7, p. 6; Kerr's Biennial Supplement to Kerr's Cyc. Cal. Codes, 1906-9, p. 90.

(2) Idaho Rev. Codes, § 382; Montana Pol. Code, § 1310. See State ex rel. Spofford v. Gifford, 22 Idaho 613, 126 Pac. 1060, 1064; Price v. Lush, 10 Mont. 61, 9 L. R. A. 467, 24 Pac. 749; State ex rel. Russell v. Tooker, 18 Mont. 540, 34 L. R. A. 315, 46 Pac. 530; State ex rel. Scharnikow v. Hogan, 24 Mont. 383, 62 Pac. 583.

(3) Fiske, Civ. Govt., p. 195; State ex rel. Metcalf v. Johnson, 18 Mont. 548, 34 L. R. A. 313, 46 Pac. 533; 15 Cyc. 326.

(4) Colo. 3 Mills Ann. Stats. § 125c; Idaho Nev. Codes, § 382; Min. Gen. Stats. 1894, § 39; Mo. Rev. Stats. 1899, § 7081; Nev. Comp. Laws, 1900, 1694; N. H. Pub. Stats. 1901, ch. 78, § 1, p. 140; N. D. Rev. Codes, 1899, § 498; Utah Rev. Stats. 1898, § 822; W. Va. Code, 1899, ch. 3, § 18, p. 69; Wyo. Rev. Stats. 1899, § 219.

(5) One per cent: Min. Gen. Stats. 1894, § 39; Ohio, 89 Session Laws, p. 434, § 6; N. Y. Laws, 1895, ch. 810, § 56.

Two per cent: Ill. Hurd's Rev. Stats. 1899, § 4, p. 802; Utah Rev. Stats. 1899, § 822; Pa. Act, 1893.

Three per cent: Cal. Pol. C. §§ 1186, 1357-1375; Mo. Rev. Stats. 1899, §7081; Nev. Comp. Laws, 1900, § 1694; W. Va. Code 1899, ch. 3, § 18, p. 69.

Ten per cent: Colo. 3 Mills Ann. Stats. § 125c.

See also Schafer v. Whipple, 25 Colo. 400, 55 Pac. 180.

(6) N. H. Pub. Stats. 1901, ch. 78, § 1, p. 140.

(7) State ex rel. Spofford v. Gifford, 22 Idaho 613, 126 Pac. 1060, 1064.

(8) Riter v. Douglass, 32 Nev. 400, 109 Pac. 444.

(9) Riter v. Douglass, 32 Nev. 400, 109 Pac. 444; see Walling v. Landson, 15 Idaho 282, 97 Pac. 396.

Thus an organized political party cannot have more than one candidate for the same office at one and the same election.—State v. Metcalf, 18 S. D. 399, 67 L. R. A. 331, 100 N. W. 298. The interesting question of party division, conflicting nominations, and the respective right of nominees, cannot be discussed in this place.

(10) Morrow v. Wipf, 22 S. D. 146, 115 N. W. 1121.

(11) Socialistic Party v. Uhl, 155 Cal. 776, 103 Pac. 181.

The term "organization of electors," in election laws, embraces new parties which had not theretofore participated in elections, organized to advance some principle or measure of public policy. The electors of a party are not confined to members of their own party in writing names

If the body of electors seeking to hold a nominating convention is a new party,[12] and without organization[13] or "political usages," persons chosen to constitute the "representative assemblage" thereof necessary to constitute a "convention," cannot be self-chosen, or appointed by one man or any set of men; but must be chosen and designated in such a manner as to render the convention, when assembled, a truly representative body.[14] It follows that the participants in a convention, as the representatives of a political party, must have been selected, appointed and designated by some class, body or party as representatives of the people of such party or district making the selection and designating the appointment.[15] A limited number of individuals, being a self-constituted body,[16] coming from a few,—say from a fourth of the voting precincts of one county in a state,—without any notice to the electors of the county, cannot lawfully organize a "county convention"; as voluntary delegates attending a state convention representative of such organized party and its principles.[17] The very underlying principle of a convention is its representative capacity of the party. This principle pervades every political system in our form of popular government. It was recognized in May, 1787, when the Federal system prevailing prior to the adoption of our present constitution and unification of the thirteen Original Colonies, was revised by the Philadelphia convention of delegates from the various states of the Federated Colonies, and has steadfastly grown to be a common form of giving expression to the choice of the people, by whom delegates are usually chosen. As political parties have grown in importance and become the media through which the declaration of the principles of electors are conveyed, the convention system has become a common part of political machinery as the means of putting candidates before the people. National party conventions have nominated the presidential and vice-presidential candidates ever since the year 1832.

Previous to the year 1816, in the selection of presidential and vice-presidential candidates, the custom was to hold a Congressional Caucus, canvass the subject and name the candidates. Thereafter the several state legislatures selected the presidential electors, who voted for whomsoever they pleased for the presidency and vice-presidency. The strangle-hold of King Caucus did not during all this time go unchallenged; and when the Congressional Caucus was called in May, 1812, the members assembled "in their individual characters,"—clearly indicating the drift of opinion of the day. Madison was unanimously nominated as presidential candidate, but the "caucus" went further and appointed "a committee of correspondence and arrangements," consisting of one person from each state, the duty of which committee was to see that the nominations of the caucus were duly respected. In the Congressional Caucus of 1816, Mr. Taylor, of New York, offered

upon a blank line upon a primary election ballot.—Socialistic Party v. Uhl, 155 Cal. 776, 103 Pac. 181, followed in Fickert v. Zemansky, 157 Cal. 400, 108 Pac. 270.

(12) New parties are embraced within the statutory regulations as to the method of naming candidates.—Morrissey v. Wait, Neb., 138 N. W. 186.

A new party formed after the time for holding primary elections, the nomination of candidates may be made by mass-convention, under Nebraska Laws, 1907, ch. 52, § 45.—Morrissey v. Wait, Neb., 138 N. W. 186.

(13) Party having only a local organization may nominate a ticket for city or ward offices; and is entitled to a place on the official ballot, so that such nominees may be voted for.—Ogg v. Glover, 72 Kan. 247, 83 Pac. 1039; Pettyjohn v. Scott, 72 Kan. 700, 83 Pac. 1014; Owen v. Milhoan, 72 Kan. 701, 83 Pac. 1044.

(14) State ex rel. Spofford v. Gifford, 22 Idaho 613, 126 Pac. 1060; State ex rel. Metcalf v. Johnson, 18 Mont. 538, 34 L. R. A. 313, 46 Pac. 533.

(15) State ex rel. Spofford v. Gifford, 22 Idaho 613, 126 Pac. 1060.

Voluntary assemblage of a few citizens of a county, meeting outside of the county, e. g., at the state convention of the party, which they had attended as voluntary delegates, does not constitute a "convention" of the county within the provision of the statute of Washington governing such conventions (Rem. & Bal. Code, §§4794, 4836).—State ex rel. Peters v. Superior Court, 70 Wash. 662, 127 Pac. 310.

(17) State ex rel. Metcalf v. Johnson, 18 Mont. 538, 34 L. R. A. 313, 46 Pac. 533.

a resolution to the effect that "Congressional caucus nominations for the presidency were inexpedient and ought to be discontinued," which motion did not prevail. This however was a new and startling departure from old customs and traditions, and the subject once raised up was not to be talked down. In 1824 the Federalists had ceased to be of political importance as a party, and the Republicans, or Jeffersonian party, were not held together by any outside pressure. Local pride and preferences entered into the canvass, and candidates for president multiplied. Nominations were made by legislatures, and also by mass-meetings throughout the country. The power of King Caucus was effectually broken, to that William H. Crawford of Georgia, whom the caucus nominated as candidate for president, and who was backed by home conventions, was left out of sight in the race for president with John C. Calhoun, Andrew Jackson, Henry Clay, and John Quincy Adams as competitors. In the year 1828 local conventions multiplied, and the spirit of the revolt movement against King Caucus manifested itself in the convention at Baltimore, September 16, 1831, at which William Wirt, of Virginia, was nominated for the presidency by the Anti-Masonic Party; and again on December 12, 1831, when National Republic party (the party of Adams and Clay, not the Jeffersonian party), met for the first and last time at Baltimore. King Caucus was completely overthrown and routed, never to return as the maker of presidential candidates, when the Democratic party, in the spring of 1832, held their first national convention and nominated Jackson and Van Buren. From that date the national political conventions in the United States have named the candidates for president and vice-president put forward by the various political parties; and the practice of nominating by convention having extended downwards to all candidates for state, county, municipal and ward offices,—the smallest political unit,—the party convention has grown to be a very important factor in our life and political affairs.[18]

In the growth of electoral reforms recent legislation has recognized the existence of political party conventions; and the statutes of many states have, as already pointed out, briefly put in definite form the rule that a convention is an organized assemblage of electors or delegates, chosen in a designated manner, representing political party or principle. It follows that under such statutes the assemblage must be not only an organized one, but the electors must as well, when so organized, represent a political party or principle, and the convention, when asembled, must be a representative body; and this representative body must be what the statute governing implies,—a gathering of electors springing from the electors who compose a political party, or adhere a political principle.[19] What is known in common parlance, and which is not provided for by the statutes,—as a mass-convention, is not such a "convention" as is above described, for the reason that in a mass-convention every voter or elector present represents himself, and himself only, not the party or the principle for which the party to which he belongs stands.[20]

To render a nominating convention regular and truly representative of the party, notice thereof is required to be given,[21] or

(18) State ex rel. Metcalf v. Johnson, 18 Mont. 538, 34 L. R. A. 313, 46 Pac. 533.

(19) State ex rel. Metcalf v. Johnson, 18 Mont. 538, 34 L. R. A. 313, 46 Pac. 533.

(20) Manston v. McIntosh, 58 Minn. 525, 28 L. R. A. 605, 60 N. W. 672.

Thus, it has been said that a precinct meeting —a precinct constituting the smallest political subdivision of the state by being a political unit,—is purely democratic, and is known as a meeting of delegates or representatives of the party, and does not constitute a "convention" within the meaning of the statute.—State ex rel. Spofford v. Gifford, 22 Idaho 613, 126 Pac. 1060, 1065.

(21) State ex rel. Peters v. Superior Court, 70 Wash. 662, 127 Pac. 310.

A nominating convention can be held only on lawful call issued, or notice given, by the organization representing the political party of the political unit or combination of units involved, and conducted in accordance with the provisions of law.—In re Freund, 53 Misc. (N. Y.) 354, 103 N. Y. Supp. 420.

A notice not signed by any person, and not

in the absence of a statutory requirement of notice, a showing must be made of such facts as imply notice or opportunity of the electorate to participate.[22]

When the delegates assemble a calling of the meeting to order by the chairman of the committee, or other body of the party, or the head of other body of the party with whom the call for the convention originates,[23] is essential to the due and regular organization thereof;[24] and it is further essential to the proper organization of a nominating convention that there shall be an actual call of the roll of the delegates selected to attend the convention, and the election of a temporary chairman.[25] This roll-call initiates the meeting of the convention.[26]

A majority of the delegates selected or elected to attend the nominating convention may organize the convention, and may take such steps and adopt such methods and rules for the government of the convention as they may deem advisable, not in violation of law, and otherwise act for and as the convention.[27] Any delegate regularly and properly selected to attend such convention may advocate in the convention such measures as he chooses, and vote as he pleases upon any question coming before the convention, regardless of what may be his motives for so doing, without in any way affecting the regularity of the proceedings, or depriving himself of the right to remain in the convention, and to participate in its proceedings;[28] and a preferential vote for a candidate by a party county convention selecting delegates to attend a state or national convention to select and name a candidate, while morally binding upon the delegates selected at such county convention to vote for such person to become a candidate of the party, is not legally binding upon the delegates chosen, when assembled in the nominating convention of that party.[29]

It remains but to add that a party nominating convention, representing any political unit of territory, is never superior to the laws of the state, and cannot make rules or regulations in violation of law, or confer rights or privileges upon persons not elected to such convention according to law, or deny to persons so elected any rights and privileges secured by law.[30]

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purporting to be signed by any person or committee, posted a day prior to the holding of the meeting, caucus, or convention, is insufficient notice thereof.—In re Freund, 53 Misc. (N. Y.) 354, 103 N. Y. Supp. 420.

(22) State ex rel. Peters v. Superior Court, 70 Wash. 662, 127 Pac. 310.

(23) In re Thomas, 128 App. Div. (N. Y.) 330, 112 N. Y. Supp. 664; In re Byrne, 128 App. Div. (N. Y.) 334, 112 N. Y. Supp. 699. Where the person duly designated to call a convention to order is present at the convention, stands on the platform, and himself, or another by his direction, calls the convention to order, the convention is thereby duly and regularly organized in so far as this act goes.—In re Devoe, 146 App. Div. (N. Y.) 943, 139 N. Y. Supp. 482.

(24) In re Hough, 141 App. Div. (N. Y.) 26, 125 N. Y. Supp. 704, 127 N. Y. Supp. 747.

(25) In re Byrne, 128 App. Div. (N. Y.) 334, 112 N. Y. Supp. 699; Orgee v. Block, 140 App. Div. (N. Y.) 410, 125 N. Y. Supp. 292.

(26) In re Byrne, 128 App. Div. (N. Y.) 334, 112 N. Y. Supp. 699.

(27) Walling v. Lansdon, 15 Idaho 282, 97 Pac. 396.

(28) Sbarboro v. Jordan, 164 Cal. 51, 127 Pac. 170. See Walling v. Lansdon, 15 Idaho 282, 97 Pac. 396.

It is customary and lawful for minority parties to coalesce when they can, and it is thought that "corrupt practices acts" do not prohibit such fusion.—State ex rel. Inf. Crow v. Bland, 144 Mo. 534, 41 L. R. A. 297, 46 S. W. 440.

(29) State v. Wait, (Neb.), 138 N. W. 159.

(30) Walling v. Lansdon, 15 Idaho 283, 97 Pac. 396.

LANDLORD AND TENANT—NUISANCE.

CERCHIONE v. HUNNEWELL et al.

(Supreme Judicial Court of Massachusetts, Suffolk. Oct. 22, 1913.)

102 N. E. 908.

In an action against a landlord for injuries to a pedestrian by falling on ice resulting from water from a spout on a building, a lease of the entire building binding the tenant to save the landlord harmless against any nuisance made or suffered on the premises, etc., held admissible to show that the nuisance was the sole act of the tenant, and to relieve the landlord from liability.

RUGG, C. J. There was evidence tending to snow that the plaintiff, in the exercise of

due care, on January 1, 1912, was injured by slipping on the sidewalk in Boston, on ice formed from water discharged from a spout on a building owned by the defendants which had been in the same structural condition for about 11 years. The building was of such size that by St. 1892, c. 419, § 66, it was required to have "leaders sufficient to carry all the water to the street, gutter or sewer, in such manner as not to flow upon the sidewalk." The spout in question discharged water from a conductor on the roof and ended about five inches from the sidewalk. The superior court, subject to the defendants' exceptions, refused to allow them to show that the building was leased to a tenant for the term of 20 years from July 31, 1906, by unrecorded leases, according to which the lessee took possession of the entire premises in their then condition, with the right to make such alterations and repairs as it might deem expedient and to remove the building and erect a new one in its place, all in compliance with the requirements of the public authorities and subject only to the approval of the plans by the lessors or their architect, and covenanted to save the defendants as lessors harmless from all loss or damage occasioned by any nuisance made or suffered on the premises, and from any claim or damages arising from neglect in not removing snow and ice from the sidewalks bordering on the premises. The question is whether there were error in this ruling.

[1-3] A landlord in the possession of his premises, who gathers water and pours it in an artificial channel in such manner as to cause the accumulation of ice upon a sidewalk, is the efficient cause in the creation of a nuisance and may be held liable for the damages which ensue as a probable consequence. Field v. Gowdy, 199 Mass. 568, 85 N. T. 884, 19 L. R. A. (N. S.) 236. Where such premises are let to a tenant at will who simply agrees to pay rent and assumes only the obligations flowing from the relation of tenancy at will, the landlord still may be held liable. Jackman v. Arlington Mills, 137 Mass. 277; Malney v. Hayes, 206 Mass. 1, 91 N. E. 911, 28 L. R. A. (N. S.) 200. Marston v. Phipps, 209 Mass. 552, 95 N. E. 954, where there is a lease of premises on which a nuisance exists or such condition as plainly will lead to the creation of a nuisance, and a surrender of control is made to the tenant without any express agreement touching the nuisance, then the landlord may be found to have contemplated the continuance of the illegal or dangerous condition by the tenant and may be held responsible for damages resulting therefrom. Jackmann v. Arlington Mills, 137 Mass. 277. But where there is a transfer of possession to a tenant under a genuine lease, by which he is given the right to make alterations and even to replace the existing structures by new, and agrees to save the lessor harmless from damages arising from any nuisance and especially from unremoved snow and ice, it cannot be said that the landlord contemplates the existence of ice on the sidewalk. As was said by Sheldon, J., in Coman v. Alles, 198 Mass. 99, 83 N. E. 1097, 14 L. R. A. (N. S.) 950: "If the premises can be used by the tenant in the manner intended by the landlord without becoming a nuisance then the landlord is not liable for any nuisance created by an act of omission or of commission" done by the tenant after he has taken possession under the lease. The circumstances of the case at bar to make it distinguishable from that case, by the authority of which it is governed. The possibility that the tenant might allow the water from this spout to flow upon the sidewalk and freeze and accumulate there in such quantities as to become dangerous does not warrant the inference that the defendant contemplated that method of using the premises any more than in Coman v. Alles, and in Wixon v. Bruce, 187 Mass. 232, 72 N. E. 978, 68 L. R. A. 248. At the time the lease was made in July, 1906, there was no nuisance of the sort now complained of on the premises. The direct source of the injury to the plaintiff here, as in other cases, was the wrongful conduct of the tenant in failing to prevent the improper accumulations of ice upon the adjacent sidewalk. Liability stops with this proximate cause. Clifford v. Atlantic Cotton Mills, 146 Mass. 47, N. E. 84, 4 Am. St. Rep. 279. The effect in shielding a landlord from liability of an express agreement in a lease, putting a duty upon the tenant to relieve against a nuisance, or the conditions from which a nuisance may be produced by an unrestrained operation of natural causes, is recognized in Dalay v. Savage, 145 Mass. 38, 42, 12 N. E. 841, 1 Am. St. Rep. 429, Cavanagh v. Block, 192 Mass. 63, 65, 66, 77 N. E. 1027, 6 L. R. A. (N. S.) 310, 116 Am. St. Rep. 220, Quinn v. Crimmings, 171 Mass. 255, 256, 50 N. E. 624, 42 L. R. A. 101, 68 Am. St. Rep. 420, Pretty v. Bickmore, L. R. 8 C. P. 405, and Gwinnel v. Eames, L. R. 10 C. P. 658.

Under the lease offered in evidence it does not appear that the landlord let a nuisance and took rent as compensation for the use of

the nuisance. If he had done this, the landlord might have been liable. But whether the nuisance should exist or not depended solely upon the act or omission of the tenant. In such case the tenant and not the landlord is liable.

St. 1907, c. 550, § 132, was not in force at the time the lease in question was made, and therefore it is unnecessary to decide what effect, if any, it might have.

The result is that in the opinion of a majority of the court the offered evidence of the lease erroneously was excluded. But this is not a proper case for the application of St. 1909, c. 236, and judgment is not ordered. Archer v. Eldredge, 204, Mass. 323, 327, 90, N. E. 525.

Exceptions sustained.

NOTE.—*Liability for Injury to Third Person Occasioned by Nuisance on Leased Property.*—The case of Coman v. Alles, 198 Mass. 99, 83 N. E. 1097, 14 L. R. A. (N. S.) 950, fully supports the ruling in the instant case, going beyond it, even, in conceding, for the sake of argument, that ice, which accumulated on the roof of a building, and fell on a pedestrian, was caused so to accumulate by reason of the building not being equipped with such leader pipes as were required by statute, which, however, would have caused no such accumulation, had the tenant in complete charge under a lease requiring him to repair and hold the landlord harmless, used precautions against improper accumulation. The tenant's failure was held to be the proximate cause.

Whether the rule is thus strict, so far as holding a landlord to liability to third persons, in other jurisdictions, is herein to be considered. It also may be said before entering on this consideration that in Massachusetts it has been held, that a tenant's liability to the public may be put upon his agreement with the landlord to hold him harmless in that regard, though he has no control, for example, of the conductors on a building which cause an accumulation of ice on a side walk, its presence causing injury to a third person, it being possible for the tenant to manage in such a way as to prevent such accumulation. Wixon v. Bruce, 187 Mass. 232; 72 N. E. 978, 68 L. R. A. 248.

In Maine the Massachusetts doctrine seems to be exceeded in the landlord's favor. Thus there it was ruled that control of a building, including its exterior, by a tenant at will relieves the landlord from the fall of snow from its roof. Lee v. McLaughlin, 86 Me. 410, Atl. 26 L. R. A. 197. The roof of this building had no guards to prevent sliding from the roof after notice so to do, but there was no evidence of notice. This case confines itself to citation of Maine and Massachusetts cases.

Walsh v. Mead, 8 Hun. 387, seems squarely opposed to these states. Thus the case holds that the roof of a building in a large city so constructed that snow falling thereon is liable to be precipitated on the sidewalk, there being no guard at the edge to prevent this, is a nuisance, for which the landlord is liable if injury results to a pedestrian, though the building is occupied by a tenant bound to make all needful repairs. This result is said to follow, though the tenant's negligence contributes to the injury. A long list of New York cases are cited and it is stated that Leonard v. Stover, 115 Mass. 86, holding the contrary was by Swords v. Edgar, 59 N. Y. 28, considered to have been erroneously decided.

In Davis v. Niagara Falls Tower Co., 171 N. Y. 336, 339, Walsh v. Mead, *supra*, is cited approvingly. And so in Aherne v. Steele, 115 N. Y. 203, 221.

Wenzlick v. McCotter, 87 N. Y. 122, was a case where owner of premises had built two houses, numbered respectively 18 and 20. There was a porch in front of both, through the roof of which on the division line was a pipe or leader descending to sidewalk on No. 18 just inside of the division line. He sold No. 18 to defendant, who changed the roof of its porch so that water was discharged elsewhere, but water from No. 20 passed through the old pipe to the sidewalk in front of No. 18 and there froze. Plaintiff slipped, fell and was injured. No. 18 was in possession of a tenant. It was held the pipe was not in itself a nuisance in the absence of an ordinance prohibiting this mode of carrying off water, but, if so, as defendant neither erected nor used it, he was not liable until requested to abate it. It was said: "Walsh v. Mead is clearly distinguishable from this in the fact that the injury came from accumulations on the defendant's own house and fell because he had improperly constructed it. In the case before us, the defendant by merely suffering the pipe to remain, doing nothing to it, in no way using it, cannot be said to have continued the nuisance." We think it clearly appears New York decision is not in harmony with that of Massachusetts.

In Gardner v. Rhodes, 114 Ga. 929, 57 L. R. A. 749, where a ditch placed upon premises for the purpose of carrying off refuse water was used as such by tenants who were washerwomen, it was held the landlord was not liable to a pedestrian falling upon ice formed of said refuse water. The opinion proceeds upon the idea that there was a combination of circumstances, the ditch, its use by tenants in extremely cold weather, and the forming of ice on the sidewalk, it being said the landlord was not responsible for the acts of his tenants, though they used the ditch in the way it was intended to be used. The case does not necessarily cover a case, where merely natural causes would have, by means of the ditch, caused formation of ice on the sidewalk. This distinction appears to be recognized in a later Georgia case. Bailey v. Dunaway, 8 Ga. App. 713, 70 S. E. 141. Here it is said if there is a nuisance at the time of the letting, the landlord could not be relieved from it by any covenant by tenant to repair or abate.

In Illinois it was ruled, in an action by a third party for injuries sustained by a shutter insecurely fastened falling upon him in an alley where he was, that it was not competent to show by a lease that the tenant assumed obligation to repair. The landlord was held liable. Foley v. Everett, 142 Ill. App. 250.

If what is on the leased premises was there when the tenant comes into possession, and is a nuisance, the tenant is not responsible for its maintenance. Ackerman v. Ellis, (N. J. L.) 79

Atl. 883, citing Meyer v. Harris, 61 N. J. L. 83, 38 Atl. 690.

So also it was held in Edwards v. Rissler, 26 Ohio C. C. R. (16 O. C. D.) 428, affirmed without opinion 69 Oh. St. 572, 70 N. E. 1129. The case says: "The rule deducible from the authorities before mentioned is this: A landlord, who leases premises with an existing nuisance thereon at the time of leasing, resulting from defects inherent in the original construction, and this occasions injury to a third person is responsible; or if the defect occurs after the letting, and the lessor by virtue of the lease covenants to repair and retains or reserves the right to enter to make repairs, he is liable for accidents occasioned by the property becoming out of repair and dangerous." C.

ITEMS OF PROFESSIONAL INTEREST.

RECENT DECISIONS OF THE NEW YORK COUNTY LAWYERS ASSOCIATION.—COMMITTEE ON PROFESSIONAL ETHICS.

In answering questions this Committee acts by virtue of the following provisions of the by-laws of the Association, Article XVI, Section III:

> "This Committee shall be empowered when consulted to advise inquirers respecting questions of proper professional conduct, reporting its action to the Board of Directors from time to time."

It is understood that this Committee acts on specific questions submitted ex parte, and its answers bases its opinion on such facts only as are set forth in the question.

Question No. 39.—In an action, which, among other things, involved the validity of a real property corporation mortgage, in which plaintiff had an interest, a motion for a receiver of the property was made by plaintiff, and in opposition the attorney and President of the corporation submitted his affidavit, wherein he stated that he, in behalf of the Company, had offered to pay plaintiff the interest due him on his share of the mortgage, if plaintiff would sign a suitable paper protecting the Company against any loss attending such payment, and that such offer was still open to plaintiff.

Subsequently plaintiff asked said attorney and President to keep his promise and pay the interest, proferring to sign any such reasonable paper as he might exact. Whereupon said attorney and President declined to pay such interest until he could determine whether or not the Company had some counter-claim against plaintiff which could be set up against the interest, and asserted that if he determined there was such counter-claim, then such interest would not be paid.

Was not such refusal to fulfill such offer and promise, improper and unprofessional?

Does not such offer and refusal amount to a deception of the Court?

Answer No. 39.—The Committee does not consider that it is unprofessional to withdraw an unaccepted offer, nor does it consider that its withdrawal, as stated, was a deception.

Question No. 40.—Within twenty days after defendant had served his answer, plaintiff moved for judgment on the pleadings and the motion was submitted on written briefs, and the Court took the same under consideration. Before the Court had decided the motion, defendant served his amended answer, and on the last day for such service, notified the Court of such action, and claimed that his amended answer superseded the pending undecided motion, and the Court, so holding, declined to decide the motion.

Subsequently plaintiff moved to amend his complaint, and in opposition to that motion defendant's attorney submitted his affidavit wherein he said:

"He (plaintiff) also omitted to advise the Court in his affidavit that upon the pleading he now seeks to amend he unsuccessfully moved for judgment on the pleadings before Justice———, over four months ago."

Was not this sworn statement untrue and improper?

May it not be characterized as an attempt to deceive the Court?

Answer No. 40.—In the opinion of the Committee, the statement appears to be true, but not full and complete. The affiant should have fully apprised the Court of the facts; his failure to do so was apt to mislead the Court, and all statements likely to mislead the Court, whether through design or inadvertence, should be carefully avoided.

Question No. 41.—An action is started in a County Court of this State to recover damages resulting from personal injuries sustained by the alleged negligence of defendant, the plaintiff being represented by Attorney A. While this action is still pending, the plaintiff, through another Attorney B, commences an action in a Municipal Court of the City of New York for the same cause of action. It does not appear that Attorney B had been informed by his client (the plaintiff) of the other action pending in the County Court, but the defendant interposes a demurrer to the

action in the Municipal Court on the ground that there is another action pending. This demurrer is opposed by Attorney B and is overruled on the ground that the defense of another action pending can only be raised by answer. Attorney B collects $10.00 costs allowed by the Municipal Court on the overruling of the demurrer, and the defendant subsequently serves a verified answer raising the point of action pending in the County Court, and the case is set for trial. On the trial day neither the plaintiff nor Attorney B appear in the Municipal Court and the case is dismissed on defendant's motion.

1. Do the above facts indicate improper conduct on the part of Attorney B?

2. Should Attorney B ascertain from the plaintiff the fact that another action for the same cause was then pending? If he did not so ascertain, was he negligent in not doing so?

Answer No. 41.—In the opinion of the Committee, the question discloses no impropriety upon the part of Attorney B, and no fact upon which negligence can be imputed to him, is stated. It would have been proper professional courtesy to notify his adversary of his intention to default, and to consent to discontinue, with his client's assent; but his failure to do so was not professional misconduct.

Question No. 43.—About twenty years ago A was convicted of a felony. After serving about eight years of his sentence, he was pardoned and restored to full civil rights. Immediately after the pardon he set up in business and has continued in that business at the same address for about ten years. He is peaceful, respectable and well thought of. Recently he was compelled to bring two suits against B, both involving questions of fact. B's counsel knew of A's conviction, his pardon, his restoration to full civil rights and his subsequent clean private and successful business life. Yet on the occasion of each trial, (one before a jury,) B's counsel interrogated A concerning his conviction of a crime, the sentence imposed, the time served, the charge and even made certain details of or consequences of the crime a part of his questions. Do you consider this conduct and these questions of B's counsel proper and ethical?

Answer No. 43.—The Committee considers that wanton, unnecessary or unreasonable inquiry or comment respecting the discreditable past history of a witness or party, is unethical and improper professional conduct; it cannot, however, assume to say that such inquiry or comment, whether admissible or not under the law of evidence, was, in the case suggested, wanton, unnecessary or unreasonable.

Question No. 44.—An attorney, in the course of representing a client in certain specific matters, is informed by the client that certain real estate is held by a third person for him (the client) in the third person's name, the property having been transferred by the client to the name of the third person for the purpose of avoiding a judgment, that deed being placed on record, the client, however, having taken back a deed from the third person to himself, this deed remaining off record and in the client's possession. The information is given to the attorney in the course of a general discussion, and entirely disconnected from any matter in which counsel's service or advice had been given.

The client afterwards fails to pay the attorney for the services rendered. Suit follows and judgment is recovered by the attorney. Execution is issued and returned unsatisfied. It appears then that the collection of the judgment, and therefore compensation to the attorney for his services, will be impossible unless he is permitted to proceed after the real estate in question and permitted to show that the same really belongs to the debtor client.

1. Would it be improper for the attorney, in enforcing his claim for compensation against his client by legal process, to attempt to reach his client's interest in the real property, thus necessarily disclosing in the proceedings, and utilizing for his own benefit, his client's statement to him, collection otherwise being impossible?

2. In legal proceedings for the enforcement of the claim, can the attorney properly call upon another attorney, who prepared and took the acknowledgments to the deeds of conveyance and reconveyance, to testify respecting the transaction?

Answer No. 44.—In the opinion of the Committee, to preserve inviolate his client's confidence is a fundamental ethical rule of our profession, binding upon every lawyer. This rule is now embodied in our New York Code of Civil Procedure, Section 835, and has been rigidly applied, but with certain apparent exceptions. With such possible exceptions in mind, the majority of the Committee is still of opinion that the attorney should not, in the case submitted, utilize for his own benefit the confidential statements of his client; and it would therefore answer Query No. 1 in the affirmative, and Query No. 2 in the negative.

Question No. 45.—An inquirer has handed the Committee a series of advertisements appearing in a daily newspaper in the forms hereto annexed, and has asked an expression of the opinion of the Committee upon the propriety of such advertising by lawyers.

Lawyers.

A.—Able lawyer, specialist family troubles, private matters, &c.; furnishes reliable advice; all cases handled; satisfaction guaranteed; quick results; domestic relation laws of all States explained. Call, write, LAWYER.....

A.—A.—A.—A.—ACCIDENTS, estates, family troubles, cases handled successfully; satisfaction guaranteed; strictly confidential; matters quickly settled; no fee unless successful. Call, write, 'phone.....LAWYER.....

ACCIDENT CASES, DOMESTIC TROUBLES and all legal difficulties STRENUOUSLY handled to YOUR SATISFACTION. LAWYER .....Evenings till 9.

FOR results see me; reliable, experienced; successful; accident, family troubles, all cases, consultation free. Call or write. LAWYER.

LAWYER (American), highest standing; consultation free; notary public.....Sundays, evenings till 9.

Answer No. 45.—In the opinion of the Committee, all of the advertisements appended to Question No. 45 are improper.

"The ethics of the legal profession forbid that a lawyer should advertise his talents or his skill as a shop-keeper advertises his wares."—(People v. McCabe, 19 L. R. A. 231.)

The first four are also objectionable because they seem to indicate a willingness to take all cases, irrespective of the merit of the cause; and the first three have the demerit of containing an impossible and therefore false and misleading guaranty of satisfaction.

BOOK REVIEW.

LUDWIG'S CONSULAR TREATY RIGHTS.

Students of international law will find food for thought in the perusal of this very timely work, and especially the comments made by the author on the most Favored Nation Cause, as to which there has been of late years more or less consideration paid both by Federal and State Courts. Our liberal immigration laws and the great influx of peoples of all character of nationalities in the old world bring many of the questions home to us and it is shown that many questions which statesmanship existing at the time of earlier treaties could not foresee and provision therefore may have turned out to be both broader, in some respects, and narrower, in other respects, than they would be were these treaties to be drafted anew.

The book is quite attractive in appearance and comes from The New Werner Comnany, Book Manufacturers, Akron, Ohio, 1913.

HUMOR OF THE LAW.

"Well, son, now that you've graduated, what are you going to be?"

"I think I'd like to be a lawyer, sir. There's a good deal of money passes through a lawyer's hands, isn't there?"

"He never lets it pass through if he knows his business, my son."—Boston Transcript.

The West Publishing Company recently received the following letter relative to a note appearing under "Cases of Interest."

"Dear Sirs: In the issue of Advance Sheets, N. W. Reporter, date of April 25th, under title 'Cases of Interest,' is a statement, 'Negro lies, but so did Abram,' which raises an important question of veracity on the part of the Oklahoma court, to which reference is made.

"The jurist who wrote that opinion is likely to find himself a full-fledged member of the Ananias club unless he in the future exercises more care in his assertions. Abram told the truth in the reference found in Genesis, 12th chapter, 11th to 20th verses. Sarai was his sister. If the judge will read Genesis, 20:12, he will find the positive statement so made by Abram. She was the daughter of his father, but not of his mother.

"The man who hints that the father of the faithful and the friend of God was a liar simply shows that he is himself a stranger to God and does not realize what is necessary to constitute a man His friend. The statement or Abram was the absolute truth, and the Oklahoma court should in humility acknowledge the error and their need for pardon. Yours for truth, H. W. L."

One of the editors, after reading the above and scanning over the Biblical references, soliloquizes as follows; but not desiring to start a Shakespeare-Bacon controversy, he declines to offer apologies to either:

"To lie or not to lie, that is the question.
Whether it be nobler in the mind
To always tell the plain unvarnished truth
Or sometimes to prevaricate; to lie,
And run the risk of being caught at last—
But what is truth and what's a lie?
Doth it consist alone in formal words?
Or may it also be by act and deed?
Aye there's the rub. We prate and boast
Of truth and then we act the lie
As Abram did. And was his guilt the less
Than that of the poor ignorant negro lad
Who stood in fear and trembling of the law?
Before the bar of justice, great and small,
White-skinned and dark-hued suitors equal stand.
And sometimes, strange to say, alike are skinned
Ere from the sacred precinct they withdraw."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Bankruptcy**—Composition.—Where a proposed composition with creditors has the approval of the majority of such creditors, such fact in itself is prima facie evidence that it is for the best interests of all.—In re Barde, U. S. D. C., 207 Fed. 654.

2.——Discharge.—While under Bankr. Act it is not essential, in order to bring debts within the provision excepting liabilities for fraud, that there be a judgment for fraud, yet, where a creditor, instead of enforcing the liability based on fraud, enforces a judgment on the contract, the debtor's discharge will be effective as to after-acquired property.—Ford v. Blackshear Mfg. Co., Ga., 79 S. E. 576.

3.——Pledgee.—A pledgee of the bonds of a bankrupt corporation pledged to secure its own note, which purchased the bonds when sold at public auction, held, under the facts shown, entitled to prove the same against the estate.—Turner v. Metropolitan Trust Co. of City of New York, C. C. A., 207 Fed. 495.

4.——Practice.—A decree of a district court, disallowing a claim in bankruptcy based on written instruments on the ground that they constituted a contingent liability, cannot be reviewed on appeal where the record does not disclose the terms, provisions, or conditions of such instruments.—Synnott v. Tombstone Consol. Mines Co., C. C. A., 207 Fed. 544.

5.——Practice.——Where a transferee of a bankrupt's assets, alleged to have been fraudulently transferred, claimed that he had purchased and paid for the same while the bankrupt was engaged in his ordinary business, the transferee was entitled to have the question determined in a plenary suit, regardless of the fact that his testimony was incredible.—In re Green, U. S. D. C., 207 Fed. 693.

6.——Preference.—Partial payments made by a bankrupt to two creditors whose claims were barred by limitations, prior to the filing of a voluntary bankruptcy petition, for the purpose of renewing the debts, held not to create a preference.—In re Banks, U. S. D. C., 207 Fed. 662.

7.——Preference.—A bank with knowledge of the insolvency of a bankrupt, having set off deposits against the bankrupt's indebtedness with its consent while it was a going concern, held entitled to retain the same, but neither it nor its subsequent transferee of certain notes, were entitled to prove their claims without the bank's surrender of deposits wrongfully set off after the bankrupt ceased to do business in the ordinary course.—In re Wright-Dana Hardware Co., U. S. D. C., 207 Fed. 636.

8.——Preference.—That a chattel mortgage given to secure antecedent indebtedness was given pursuant to agreement contemporaneous with indebtedness held not to prevent it constituting a voidable preference.—In re Herman, U. S. D. C., 207 Fed. 594.

9.——Trustee's Lien.—The lien conferred on a bankrupt's trustee dates from the time of the bankruptcy proceedings.—Big Four Implement Co. v. Wright, C. C. A., 207 Fed. 535.

10. **Banks and Banking**—Set-off.—Notwithstanding Negotiable Instruments Law where one who signed as maker seeks to set off his deposit in an insolvent bank against his liability to the bank on the note, he will not be treated as the real party in interest, where he signed for the benefit of his comaker in order to enable him to negotiate the instrument.—Knaffle v. Knoxville Banking & Trust Co., Tenn., 159 S. W. 838.

11. **Bills and Notes**—Certificate of Deposit.—A certificate of deposit issued by a bank, not subject to check and payable to the depositor's order on return of the certificate properly indorsed, is negotiable.—Pomeroy Nat. Bank v. Huntington Nat. Bank, W. Va., 79 S. E. 662.

12.——Delivery.—There was a good delivery of a note to the payee, where it was delivered by the maker to her husband with the knowledge and consent of the payee, to be held by the maker's husband as the payee's agent.—Crosier v. Crosier, Mass., 102 N. E. 901.

13.——Joint Obligation.—Where a note recites that "we" promise to pay, and is executed by the president of a corporation for the company, and indorsed by him as surety, it must be treated as a joint obligation.—Canadian Long Distance Telephone Co. v. Seiber, Tex., 159 S. W. 897.

14. **Brokers**—Enforceable Contract.—Where a purchaser procured by a broker was ready, willing, and able to complete the sale, and the vendor could have compelled specific performance by complying with his contract to tender a good record title to the property, the broker had completed his services and was entitled to commissions.—McLane v. Petty, Tex., 159 S. W. 891.

15. **Boundaries**—Equity.—A court of equity should entertain a bill to order a survey of land and establish the rights of the various owners, where because of variance in the descriptions in the deeds of the parties, and conflict between two surveys, there is confusion in the descriptions, and conflicting claims among the parties.—Reinecke v. Reinecke, Miss., 63 So. 215.

16.——Hearsay Evidence.—Hearsay and common reputation is received in boundary disputes, provided it has its origin at a time comparatively remote, and attaches to some monument or natural object, or is fortified by evidence of occupation and acquiescence giving the land a definite location.—Locklear v. Paul, N. C., 79 S. E. 617.

17. **Carrier of Passengers**—Assumption of Risk.—While a caretaker riding in the car with a shipment of live poultry instead of in the caboose assumed all risks reasonably incident to that mode of carriage, he did not assume those resulting from unnecessary and extraordinary occurrences involving dangers not incident to the proper handling of such freight trains.—Kloppenburg v. Minneapolis, St. P. & S. S. M. Ry. Co., Minn., 143 N. W. 322.

18. **Contracts**—Construction.—Under a contract to furnish plaintiff with board and food for the rest of her life, defendant was bound to furnish her food according to her needs, and, if he did not, he was liable for the fair value of the food not furnished.—Soderlund v. Helman, Mass., 102 N. E. 899.

19.——Construction Contract.—It is competent for the parties to a construction contract to agree therein that the decision of an engineer on disputed matters shall be final and conclusive, and in the absence of fraud or mistake so gross as to necessarily imply bad faith the decision of the umpire so selected will not be revised by the courts.—United States v. Cooke, U. S. D. C., 207 Fed. 682.

20.——Pleading.—Where a contract sued on is not alleged to be in writing, it will be presumed to be oral.—Blish Milling Co. v. Detherage, Ky., 159 S. W. 816.

21.——Public Policy.—A written agreement, executed by a husband and wife while the relation existed, which provided for the payment by the husband of a certain amount in trust, to pay a part thereof to the wife until a divorce was secured and the remainder after the wife had secured a divorce, was void as against public policy.—Wolkovisky v. Rapaport, Mass., 102 N. E. 910.

22. **Corporations**—Venue.—At common law a corporation could be sued only in the county where its corporate property was situated or where it had its principal place of business, and under statutory provisions it can be sued in other forums only as therein provided.—Great Western Life Assur. Co. v. State, Ind., 102 N. E. 849.

23. **Criminal Evidence**—Confession.—In determining whether a confession is admissible in evidence, the court and not the jury is to determine both the law and the fact; the province of the jury being merely to determine the effect of the confession as evidence of guilt.—State v. Armijo, N. M., 135 Pac. 555.

24.——Instructions.—Where there is a confession of the crime by the defendant in evidence, it is not necessary for the court to give a charge upon circumstantial evidence.—Anderson v. State, Tex., 159 S. W. 847.

25. **Customs and Usages**—Latent Ambiguity.—A warehouse receipt, providing that cotton was held subject to presentation of the receipt only, the paying of expenses and advances "acts of fire and Providence excepted," held subject to explanation so far as related to the quoted phrase, and to proof that, by a recognized local custom, defendant undertook to insure all cotton in its warehouse.—Rochelle Gin & Cotton Co., v. Fisher, Ga., 79 S. E. 584.

26. **Damages**—Measure of.—There is no measure of damages for mental suffering except what an impartial jury shall deem adequate.—Yellow Pine Paper Mill Co. v. Lyons, Tex., 159 S. W. 909.

27.——Punitive.—Failure of a railroad engineer, on approaching a crossing in a sparsely settled locality, to give statutory warning signals is not gross negligence per se, so as to authorize a recovery of punitive damages in an action for death at a crossing.—Schmid's Adm'r v. Louisville & N. R. Co., Ky., 159 S. W. 786.

28.——Punitive.—To warrant punitive damages, the injury need not result from an intentional wrong, a showing of reckless conduct or such gross negligence as to indicate the wantom disregard of the rights of others, being sufficient.—Chesapeake & O. Ry. Co. v. Johns' Adm'x, Ky., 159 S. W. 822.

29. **Deeds**—Restrictions.—Where a father, conveying a part of a residence tract to his son, inserted a building restriction in the deed, such restriction was for the benefit of the father's remaining portion of the tract, and was enforceable by the subsequent grantees thereof.—Appel v. Buckbinder, 143 N. Y. Supp. 710.

30. **Divorce**—Alimony.—On granting a divorce to a wife, the court should make a proper division of the property, though most of it had been acquired by the husband before marriage.—Hale v. Hale Wash., 135 Pac. 481.

31. **Easements**—Private Way.—The stopping or impeding of a private way which has been opened and is in use is a private nuisance.—Adair v. Spellman Seminary, Ga., 79 S. E. 589.

32.——Streets on Plat.—Where lots are bought and sold with reference to a plat showing certain streets, a person who purchases with reference to the plat acquires such a right in all the streets designated thereon as entitles him to enjoin the obstruction of one such street, even though his lots do not abut upon it.—Adair v. Spellman Seminary, Ga., 79 S. E. 589.

33.——Way of Necessity.—That a way may be one of necessity, the facts must be such that the law raises the presumption that the parties had agreed that the grantee should have right of access to the land conveyed over unconveyed land of the grantor; and, a valid express agreement having been made, there is no room for presumption.—Jann v. Standard Cement Co., Ind., 102 N. E. 872.

34. **Electricity**—Extraordinary Care. — One handling a high current of electricity in a public street is bound to use a much higher degree of care than ordinary care to keep its wires safe.—Owensboro City R. Co. v. Haden, Ky., 159 S. W. 792.

35.——Proximate Cause.—Where, in an action for death of plaintiff's intestate by contact with a broken electric light wire, it appeared that the exercise of reasonable care by defendant telephone company, the wires of which sagged against the light wire of defendant vil-

lage, or by the village, to prevent contact, would have prevented the accident, the question of proximate cause was properly submitted to the jury.—Sykes v. Village of Portland, Mich., 143 N. W. 326.

36. **Eminent Domain**—Discontinuing Highway.—A property owner, in the absence of statutory provision, is not entitled to damages for discontinuance of a county road.—Chenault v. Collins, Ky., 159 S. W. 834.

37.——Sewage.—Where a municipal corporation emptied sewage into a stream flowing through plaintiff's land, thus injuring her property, there was a taking of private property for public use within the purview of the Constitution, guaranteeing that private property shall not be taken for public use without just compensation.—Parrish v. Town of Yorkville, S. C., 79 S. E. 635.

38.——Trees on Street.—A quasi public corporation, such as an electric light company, authorized to place poles and wires along the streets of a city cannot invade the rights of a property owner in respect to trees in the street in front of his property, without paying compensation therefor.—Moore v. Carolina Power & Light Co., N. C., 79 S. E. 596.

39. **Evidence**—Duress.—It is presumed that the influence of duress by threats continues.—Eureka Bank v. Bay, Kan., 135 Pac. 584.

40.——Receipts.—Warehouse receipts are ordinarily subject to explanation by parol.—Rochelle Gin & Cotton Co. v. Fisher, Ga., 79 S. E. 584.

41. **Executors and Administrators**—Executor de Son Tort.—At common law a creditor of a decedent could recover from an executor de son tort only if he could show that the acts of the intermeddler resulted in loss to the creditor.—Merrill v. Comstock, Wis., 143 N. W. 313.

42. **Exemptions**—Waiver.—That a debtor gives a mortgage on exempt chattels does not work a forfeiture of his right to exemption as against an attaching creditor.—McComb v. Watt, Okla., 135 Pac. 361.

43. **Fraud**—False Representations.—When a party to a bargain knowingly makes false assertions as to the value of the property as an inducement to the trade, and these are accepted and reasonably relied on, they constitute an actionable wrong.—Pate v. Blades, N. C., 79 S. E. 608.

44. **Fraudulent Conveyances**—Equity.—Where complainant in having certain real property purchased by him conveyed to his sister was actuated by two motives, one of which was fraudulent as against his ex-wife and the other legal, equity would not separate the one from the other and determine which was the controlling factor in ascertaining whether he was entitled to compel a reconveyance of the property from the sister's administrator on the theory that she held under a dry trust.—Shamo v. Benjimin's Adm'r, Ky., 159 S. W. 798.

45. **Frauds, Statute of**—Performance Within Year.—Where, in an action for the breach of an oral contract, plaintiff testified that defendant agreed to take milk for a year on the date of the conversation resulting in the contract, a charge that, if defendant agreed to take the milk for one year, the agreement could be performed within one year, but, if he agreed to take the milk for a year from some future date, the agreement was within the statute of frauds, sufficiently submitted the issue of the statute of frauds.—Raymond v. Phipps, Mass., 102 N. E. 905.

46. **Guardian and Ward**—Accounting.—A guardian, as an officer of the court, must make full disclosure in his reports of all matters affecting the trust, and misrepresentation or concealment which works an imposition on the court and gives the guardian an unfair advantage in his settlement vitiates it.—Euler v. Euler, Ind., 102 N. E. 856.

47. **Habeas Corpus**—Custody of Child.—The unfitness which will deprive a parent of the right to the custody of his minor child must be positive; the mere fact that the child might be better cared for by a third person being insufficient to deprive him of such right.—Jamison v. Gilbert, Okla., 135 Pac. 342.

48. **Homesteads** — Involuntary Absence.—Plaintiff's involuntary absence from a homestead while in jail could not be considered in determining the question of abandonment.—Lindsey v. Holly, Miss., 63 So. 222.

49.——Waiver.—A judgment defendant who consents that a judgment for a certain amount may be entered in an action against him, and may be satisfied out of the property attached in that action, waives his homestead in the attached property, and cannot thereafter claim an exemption, as he might have done had the judgment been against his consent.—Simmons v. McCullin, N. C., 79 S. E. 625.

50. **Husband and Wife**—Alimony.—A decree for alimony, where no divorce is sought, ordinarily differs from the decree where the divorce is sought in that the former contemplates merely the present needs of the wife while the latter contemplates her future support.—Lewis v. Lewis, Okla., 135 Pac. 397.

51.——Estoppel.—Where a wife having an equitable title to land to which her husband has the legal title permits him to use same in obtaining credit, she is estopped, after the credit has been extended, from asserting her title as against the lien of a judgment obtained by the creditor, though before judgment her husband had conveyed the land to her.—Ford v. Blackshear Mfg. Co., Ga., 79 S. E. 576.

52.——Tenancy By Entireties.—A conveyance of land to a husband and wife creates a tenancy by entireties, and the survivor takes the whole by right of survivorship.—Tharp v. Updike, Ind., 102 N. E. 855.

53. **Injunction** — Abating Nuisance.—Equity will restrain a municipal corporation from abating a nuisance, where private rights are unlawfully encroached upon and irreparable injury will ensue.—Parker v. City of Fairmont, W. Va., 79 S. E. 660.

54.——Abuse of Discretion.—A mistake of law committed by the trial court in granting a mandatory injunctional order for the destruction of property, pending the trial of an action on its merits, is an abuse of discretion.—Bissel v. Olson, N. D., 143 N. W. 340.

55. **Insurance**—Representations—Where the answers of the assured in his application are to be construed as representations, they need be only substantially true so far as such representations were material to the risk.—Prudential Ins. Co. of America v. Sellers, Ind., 102 N. E. 894.

56.——Warranties.—Where allegations of the truthfulness of answers to questions were made in an application, and the beneficiary certificate recited that it was issued subject to such statement "which are hereby warranted to be full, complete and true and made a part of this contract," such statements were warranties.—Green v. National Annuity Ass'n., Kan., 135 Pac. 586.

57. **Interest**—Tender.—A plea of tender was insufficient to stop interest where the tender

was not kept good and defendant did not produce the money and pay it into court.—Dr. Shoop Family Medicine Co. v. Davenport, N. C., 79 S. E. 602.

58. **Intoxicating Liquors**—Public Policy.—A contract for the sale of intoxicating liquors, with the evidenced knowledge that they will be resold contrary to law, being against public policy, is unenforceable.—Pabst Brewing Co. v. Smith, Okla., 135 Pac. 381.

59. **Judicial Sale**—Restraint on Bidding.—A contract whereby a bidder at a private judicial sale induced another to refrain from bidding, and thereby was enabled to purchase the property at less than he otherwise would have been compelled to pay, is void.—Shaw v. Elijah, Ind., 102 N. E. 885.

60. **Judgment**—Notwithstanding Verdict.—In passing on the correctness of a ruling on a motion for judgment upon interrogatories and answers thereto, notwithstanding the general verdict, only the pleadings, interrogatories, answers, and the general verdict can be considered.—Patterson v. State Bank of Chrisman, Ind., 102 N. E. 880.

61. **Landlord and Tenant**—Nuisance.—In an action against a landlord for injuries to a pedestrian by falling on ice resulting from water from a spout on a building, a lease of the entire building binding the tenant to save the landlord harmless against any nuisance made or suffered on the premises, etc., held admissible to show that the nuisance was the sole act of the tenant, and to relieve the landlord from liability.—Cerchione v. Hunnewell, Mass., 102 N. E. 908.

62. **Libel and Slander**—Privilege.—Publication of libelous charges, set forth in the complaint and affidavits filed in a civil suit against plaintiff, before trial or any action taken on the pleadings or papers is not privileged.—Meeker v. Post Printing & Publishing Co., Colo., 135 Pac. 457.

63. **Limitation of Actions**—Duress.—The statute of limitations governing actions for relief on the ground of fraud has no application to actions for relief on the ground of duress by threats.—Eureka Bank v. Bay, Kan., 135 Pac. 584.

64.——Law of Forum.—Whether a foreign judgment is barred by limitations must be determined by the statutes of Kentucky, where a suit thereon is brought.—Hoerter v. Garrity, Ky., 159 S. W. 815.

65. **Master and Servant**—Anticipating Danger.—A master is not bound to anticipate and provide against an accident, the danger of which is not apparent, or which cannot be ascertained by the exercise of ordinary care, and which does not become apparent until after the accident.—Great Northern Ry. Co. v. Johnson, C. C. A., 207 Fed. 521.

66.——Assumption of Risk.—Where it was customary in a quarry for the foreman to inspect missed shots before reloading them, a laborer, directed to reload a missed shot, did not assume the risk of injury from an explosion while engaged in his work of reloading, owing to unextinguished fire in the hole.—Taylor v. Atchison Gravel, Sand & Rock Co., Kan., 135 Pac. 576.

67.——Repeal of Statute.—Where defendant was negligent per se in employing plaintiff, under 14 years of age, in a woodworking factory in violation of Act March 6, 1903, such negligence was not affected by the repeal of the statute before trial of an action for injuries by Act March 13, 1911, providing more stringent regulations for the employment of children.—Stirling v. Bettis Mfg. Co., Tex., 159 S. W. 915.

68.——Respondeat Superior.—Whether a servant, borrowed from a contractor by a defendant to assist in unloading glass from a wagon, was defendant's servant, depended, not on whether defendant paid for his time, but rather on who had authority to control his movements.—Generous v. Hosmer, Mass., 102 N. E. 912.

69. **Mechanics' Liens**—Compliance With Statute.—Where a mechanics' lien statement shows both the date of the order and the date of the invoice of the material to the owner, the time allowed for perfecting the lien will be computed from the latter date.—Geppelt v. Middle West Stone Co., Kan., 135 Pac. 573.

70.——Surrounding Land.—Where the owner of a house upon which a lien was sought owned a large tract of land which he intended to subdivide into lots, evidence of his staking off various lots, together with his statement of his intentions, must be considered in determining how much land surrounding the house was subject to the lien.—Donnelly v. Butler, Mass., 102 N. E. 917.

71. **Mortgages**—Reconveyance.—Where plaintiffs borrowed money from defendant with which to purchase certain real property, the title being conveyed to defendant as security for the loan, defendant held such title as trustee and as mortgagee, so that on payment of the loan plaintiffs were entitled to a reconveyance.—Whitehouse v. Whitehouse, Cal., 135 Pac. 509.

72.——Redemption.—Any person having an interest in the mortgaged real estate may redeem from a deed which, though absolute on its face is intended as a mortgage.—Krauss v. Potts, Okla., 135 Pac. 362.

73. **Municipal Corporations** — Governmental Duty.—Where a village maintained an electric light plant for both commercial and municipal purposes, it was not relieved from liability for negligence of its employes, resulting in death of plaintiff's intestate, on the theory that the business involved governmental functions.—Sykes v. Village of Portland, Mich., 143 N. W. 326.

74.——Light and Air.—An abutting owner has a special right of access to a highway and to light, air, and view therefrom regardless of the ownership of the fee in the highway.—Davis v. Spragg, W. Va., 79 S. E. 652.

75.——Reversion of Fee in Street.—Where a public street has been abandoned, the fee in the soil reverts to the owners of the abutting lots.—Adair v. Spellman Seminary, Ga., 79 S. E. 589.

76.——Shade Trees.—The owner of property abutting on a street in a city has an easement or property in the shade trees standing along the sidewalk in the street, subject to the right of the city government over the same, and one which the law will protect.—Moore v. Carolina Power & Light Co., N. C., 79 S. E. 596.

77. **Navigable Waters**—Riparian Owner.—The capacity of a navigable stream cannot be increased by artificial means to the injury of a riparian proprietor without compensation.—Bissel v. Olson, N. D., 143 N. W. 340.

78.——State Control.—While the state's control over navigable tidal and boundary streams is subordinate to that of the federal government, its power to improve other navigable waters of the state is equal to that of the federal government in tidal and boundary streams.—West Virginia Pulp & Paper Co. of Delaware v. Peck, 143 N. Y. Supp. 720.

79. **Notice**—Sufficiency of.—Whatever is sufficient to put persons on inquiry is sufficient to affect them with notice only of such facts as they might be presumed to have learned on reasonable inquiry.—Bowles v. Belt, Tex., 159 S. W. 885.

80. **Nuisance**—Disorderly Guests.—An action by the proprietors of a hotel for damages to their business caused by the immoral conduct of the defendant while guests in the hotel, whereby the reputation of the hotel was injured, is an action for a private nuisance, not an action for slander.—Hall v. Galloway, Wash., 135 Pac. 478.

81.——Special Damage.—An individual may sue to enjoin a public nuisance only when his rights are affected in a special manner different from the public in general.—Davis v. Spragg, W. Va., 79 S. E. 652.

82. **Partition**—Gas and Oil.—Where land is the subject of a suit in partition contains valuable deposits of oil and gas in imminent danger of loss by drainage, and the parties interested are unable to agree upon some plan for development, the court may appoint a receiver to produce the oil and gas as a measure of preservation.—Ohio Fuel Oil Co. v. Burdett, W. Va., 79 S. E. 667.

83.——Presumption of.—Where each of several joint owners of land takes possession of a separate part and continues to hold the same

for a period of years, it will be presumed that there has been a partition between the parties. Helton v. Campbell, Ky., 159 S. W. 785.

84. **Partnership**—Practice and Procedure.—Where an action was brought in a firm name without any allegation showing the individuals composing it, and the firm answered in the same name, a judgment against it in that name was sufficient to support an execution against the firm property.—Houssels v. Coe & Hampton, Tex., 159 S. W. 864.

85. **Principal and Agent**—Agency.—Where a contract for the plumbing in a building being constructed by plaintiff was prepared in his office, approved by his general manager and agent, and signed on plaintiff's behalf by F., plaintiff could not have repudiated it for want of sufficient execution on his part, even if his signature had been necessary.—Leonard v. Howard, Ore., 135 Pac. 549.

86.——Discharge.—The surety on the bond of a building contractor is discharged, where the obligee fails to retain not less than 15 per cent of the value of all work performed and material furnished as required by the bond.—Morgan v. Salmon, N. M., 135 Pac. 553.

87. **Principal and Surety**—Extension.—Provision in a note, signed by a surety, as well as the principal debtor, that time of payment might be extended without notice thereof permitted of but one extension; so that a subsequent extension, without the knowledge and consent of the surety, binding the payee, discharged the surety.—Heaton v. State Nat. Bank, Tex., 159 S. W. 874.

88. **Railroads**—Licensees.—Where the superintendent of a railroad allowed the foreman in charge of construction to take his two sons with him, the sons were licensees, though the superintendent was specifically directed not to permit it.—Chicago, R. I. & G. Ry. Co. v. Oliver, Tex., 159 S. W. 853.

89.——Negligence Per Se.—Violation by a railroad of an ordinance limiting the rate of speed and in regard to ringing the bell is negligence per se, where it results in injuries to a boy run over at or near a crossing.—Pittsburgh, C. C. & St. L. Ry. Co. v. Broderick, Ind., 102 N. E. 887.

90.——Presumption of Negligence.—In an action for the death of one killed at a railroad grade crossing, there is no presumption as to the negligence of the defendant or the contributory negligence of the plaintiff.—Cleveland, C., C. & St. L. Ry. Co. v. Champe, Ind., 102 N. E. 868.

91.——Punitive Damages.—A railroad company may be amerced in punitive damages where its servants, even by unaccountable forgetfulness, run their train counter to an approaching regular scheduled train, which had the right of way, thus causing a collision; the forgetfulness of the trainmen being reckless negligence.—Chesapeake & O. Ry. Co. v. Johns' Adm'x, Ky., 159 S. W. 822.

92.——Tortfeasors.—It is negligent for the owner of wood to leave it stacked on a railroad right of way, and the owner of the wood, as well as the railroad company, would be liable for damages caused by a fire which started in that wood and spread to other property.—Brunner v. Minneapolis, St. P. & S. S. M. Ry. Co., Wis., 143 N. W. 305.

93 **Rape**—Corpus Delicti.—The corpus delicti may be proved in a rape case by extrajudicial admissions and circumstantial evidence.—State v. Cardwell, Kan., 135 Pac. 597.

94. **Receivers**—Ordinary Care.—While receivers are necessarily clothed with a considerable discretion in the management of the trust property, that fact does not excuse them for dealing with it carelessly or extravagantly.—Hitner v. Diamond State Steel Co., U. S. D. C., 207 Fed. 616.

95. **Sales**—Damages.—The measure of damages for the breach of a contract binding one to buy milk from another for a year at a specified price includes the profits which the seller would have realized from the contract if fully performed by the buyer.—Raymond v. Phipps, Mass., 102 N. E. 905.

96.——Implied Warranty.—A sale of goods by a manufacturer for resale imports an implied warranty that the goods are merchantable.—Dr. Shoop Medicine Co. v. Davenport, N. C., 79 S. E. 602.

97.——Waiver.—A seller of a drug stock, having taken possession after the buyer's repudiation of the sale while the contract was still executory, held to have waived his right to sue on the contract.—McCrea v. Ford, Colo., 135 Pac. 465.

98. **Set-Off and Counterclaim**—Equity.—The remedy of equitable set-off may be enforced independently of the statutes, where from the nature of the claim or the situation of the parties it is impossible to obtain justice by plea or cross-action.—Knaffle v. Knoxville Banking & Trust Co., Tenn., 159 S. W. 838.

99. **Subrogation**—Right of.—A widow who advances money for the payment of claims against her husband's estate has such an interest in the estate as will entitle her to be subrogated to the rights of the creditors whose claims she paid.—Merrill v. Comstock, Wis., 143 N. W. 313.

100. **Sunday**—Pleading.—The defense of illegality of the contract sued on because made on Sunday is not available unless pleaded.—Raymond v. Phipps, Mass., 102 N. E. 905.

101. **Telegraphs and Telephones**—Burden of Proof.—Proof that a telegraph company incorrectly transmitted a message is prima facie evidence of its negligence.—Levy Bros. v. Western Union Telegraph Co., Okla., 135 Pac. 423.

102. **Tenancy in Common**—Subsurface Rights.—Where a natural gas company was a tenant in common of land with plaintiff, and appropriated the entire gas product of the land, plaintiff in an action for an accounting cannot be charged, in determining the amount of his damages, with sums expended by defendant in the purchase of the stock and securities of underlying companies, or in sinking funds to redeem bonds issued in payment of the original cost of the construction of a pipe line by which the gas was conducted from the land, or for drilling new wells for defendant.—Johnson v. Kansas Natural Gas Co., Kan., 135 Pac. 589.

103. **Tender**—Conditional.—To make it effectual, a tender must not be fettered with a condition imposed by the one making it that a discharge shall be executed releasing him from all demands.—Purdin v. Hancock, Ore., 135 Pac. 515.

104. **Trade-Marks and Trade-Names**—Defined.—A name, in order to constitute a valid trade-mark, must point distinctly to the origin or ownership of the commercial article to which it is attached, either in meaning or by association, and must be of such a nature as to permit of exclusive appropriation by one person.—Apollo Bros. v. Perkins, C. C. A., 207 Fed. 530.

105. **Vendor and Purchaser**—Duty of Inquiry.—Where a power of attorney to convey land is fraudulently obtained, and the person to whom a sale is made has knowledge of circumstances sufficient to excite the suspicions of a prudent person and put him upon inquiry, he will be charged with knowledge of facts which a diligent inquiry would have disclosed.—Kuhn v. Wise, Kan., 135 Pac. 571.

106.——Duty of Inquiry.—A purchaser having notice of an opposing claim is thereby placed upon inquiry and charged with notice of every fact which a proper inquiry would have discovered.—Raeford Lumber Co. v. Rockfish Trading Co., N. C., 79 S. E. 627.

107.——Merchantable Title.—Where a contract required the vendor to sell and convey by deed with covenants of general warranty and to furnish an abstract showing good merchantable title, he was bound to deliver a record title, and could not compel the vendee to accept a title by limitations.—McLane v. Petty Tex., 159 S. W. 891.

108.——Rescission.—Where a contract for the sale and purchase of land is rescinded, it is at an end, and the parties stand as though it had never existed; each being entitled to be restored to his original status—the vendor to possession, the rent, if any, and damages for the breach, and the purchaser to a refund of the money paid under the contract, together with interest.—Jones v. Grove, Wash., 135 Pac. 488.

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BUFFALO.
Hayden N. White.

CHEYENNE.
Gibson Clark.
W. C. Kinkead.
Herbert V. Lacey.
W. E. Mullen.

DOUGLAS.
Harvey & Hawley.

RAWLINS.
N. R. Greenfield.

SHERIDAN.
M. B. Camplin.
F. M. Downer, Jr.

SUNDANCE.
Harry P. Ilsley.
E. C. Raymond.

FOREIGN

CANADA.

OTTAWA.
M. J. Griffin.
H. H. Bligh.

TORONTO.
James Bicknell.
Kenry O'Brien.

CEYLON.

KANDY.
R. W. Jonklass.

SCOTLAND.

GLASGOW.
Donald Mackay.